Public Prosecutor v Umar Cipto Sumarto

HIGH COURT (TAWAU) — SUIT NO T(45)–02 OF 2002
LINTON ALBERT J
29 SEPTEMBER 2005

Criminal Law — Possession of firearms — Proof of physical possession of firearms — Defence of non-intention to sell firearms — Whether evidence adduced to prove unlawful possession of firearms — Firearms (Increased Penalties) Act 1971 s 7

The accused was charged with trafficking firearms, an offence punishable under s 7(1) of Firearms (Increased Penalties) Act 1971 ('the Act'). The counsel for the accused contended that the prosecution failed to establish that the firearms tendered as exhibits including the two bags P5 and P6 in which they were placed were those that were purchased in the Philippines and found in the possession of the accused on board of 'Semoga Makmur'. Central to the issue was the fact that P5 and P6 containing the firearms though were found on 'Semoga Makmur' but were not in the physical possession of the accused. It was also contended by the defence that the prosecution could not prove that the firearms seized on 'Semoga Makmur' were the ones produced and tendered in the court. Further, the defence argued that the accused did not and never had the intention to 'sell' the firearms and it was therefore argued that the accused could not be said to traffic in firearms.

Held:

(1) The court was satisfied that from the evidence adduced that the prosecution had proved unlawful possession of more than two firearms by the accused and could with justification rely on the presumption under s 7(2) of the Act (see para 6).

(2) Based on the evidence of PW5, PW6, PW10, PW2 and the accused's own testimony, the prosecution has succeeded in establishing possession of the firearms by the accused. The accused knew that the firearms were in the two bags P5 and P6 and were placed by him on board of 'Semoga Makmur' and he had the power of disposal of the firearms to the exclusion of all the others on board at the time they were found by PW5 and PW6 (see para 10).

(3) From the evidence adduced, there was no material breach in the chain of evidence. The court was satisfied from the evidence of the prosecution's witnesses viewed together with the accused's own testimony and the inferences from the relevant surrounding circumstances that the prosecution had succeeded in establishing that the exhibits produced in court were the firearms seized from 'Semoga Makmur'. Further, it would be totally unjust to impose upon the prosecution the added burden of disproving or excluding every doubt that can possibly exist (see paras 12–13).

(4) Therefore, it could not be said that the prosecution's case was based on strong suspicion or simply because it was likely to be true. The evidence of PW10, PW2 and that of the accused taken together established the prosecution case that the accused was in possession of the firearms at the time he was arrested on the 'Semoga Makmur' (see para 9).

(5) On the issue of 'traffic in firearms', the words 'transfer, sell or offer for sale' in s 2(1) (c) of the Act must be read disjunctively and in the circumstances, the prosecution has clearly established that the accused intended to transfer the firearms to his comrades in Indonesia (seeparas 20–21).

[Bahasa Malaysia summary

Tertuduh disabit dengan tuduhan mengedar senjata api, satu kesalahan di bawah s 7(1) Akta Senjata (Penalti Lebih Berat) 1971 ('Akta tersebut'). Peguamcara kepada tertuduh mengatakan bahawa pihak pendakwaraya gagal membuktikan yang bahawa senjata api yang diekhsibitkan termasuklah kedua-dua beg P5 dan P6 yang mana di dalamnya mengandungi senjata api tersebut adalah beg yang dibeli di Filipina dan yang dijumpai dalam milikan tertuduh di atas kapal 'Semoga Makmur'. Tumpuan isu ini adalah fakta bahawa P5 dan P6 yang mengandungi senjata api itu walaupun dijumpai di atas kapal 'Semoga Makmur' tetapi ianya bukan berada di dalam milikan fizikal tertuduh. Ianya juga dikatakan oleh peguamcara defendan bahawa pihak pendakwaraya tidak dapat membuktikan bahawa senjata api yang disita dari 'Semoga Makmur' adalah senjata api yang dikemukakan di mahkamah. Selanjutnya, peguamcara defendan mengatakan bahawa tertuduh tidak mempunyai dan tidak pernah berniat untuk 'menjual' senjata api tersebut dan oleh yang demikian tertuduh tidak boleh dikatakan mengedar senjata api.

Diputuskan:

(1) Mahkamah berpuashati dari keterangan yang dikemukakan bahawa pendakwaraya telah membuktikan milikan tidak sah lebih dari dua buah senjata api oleh tertuduh dan dengan itu boleh menjustifikasikan pergantungan kepada anggapan di bawah s 7(2) Akta tersebut (lihat perenggan 6).

(2) Berdasarkan keterangan PW5, PW6, PW10, PW2 dan juga testimoni tertuduh sendiri, pendakwaraya telah berjaya membuktikan milikan senjata api tersebut oleh tertuduh. Tertuduh mengetahui yang bahawa senjata api tersebut ada di dalam dua beg P5 dan P6 dan ianya diletakkan oleh tertuduh di atas kapal 'Semoga Makmur' dan beliau mempunyai hak untuk membuang senjata api tersebut yang terkecuali dari mereka yang lain yang berada di atas kapal tersebut semasa senjata api itu dijumpai oleh PW5 dan PW6 (lihat perenggan 10).

(3) Dari keterangan yang dikemukakan, tiada terdapat celahan yang material dalam rangkaian keterangan. Mahkamah berpuas hati dari keterangan saksi-saksi pendakwaraya dilihat bersama dengan testimoni tertuduh sendiri dan dari inferens keadaan sekeliling yang relevan bahawa pendakwaraya telah berjaya membuktikan bahawa ekhsibit yang dikemukakan di mahkamah adalah senjata api yang disita dari 'Semoga Makmur'. Selanjutnya, ianya tidak adil sama sekali untuk meletakkan ke atas pendakwaraya beban tambahan untuk membuktikan setiap kesangsian yang mungkin wujud (lihat perenggan 12–13).

(4) Oleh yang demikian, ianya tidak boleh dikatakan bahawa kes pendakwaraya berlandaskan pada rasa syak yang kuat atau ianya hanya berkemungkinan benar. Keterangan PW10, PW2 dan yang tertuduh dilihat bersama membuktikan kes pendakwaraya yang bahawa yang tertuduh mempunyai milikan senjata api tersebut semasa beliau ditangkap di atas 'Semoga Makmur' (lihat perenggan 9).

(5) Pada isu 'pengedaran senjata api', perkataan-perkataan 'memindahkan, menjual atau membuat tawaran jualan' di dalam s 2(1)(c) Akta tersebut hendaklah dibaca secara berasingan dan dalam keadaan ini, pendakwaraya telah dengan jelasnya membuktikan bahawa yang tertuduh mempunyai niat memindahkan senjata api tersebut kepada kawan-kawan seperjuangannya di Indonesia (lihat perenggan 20–21).]

Notes

For cases on Firearms (Increased Penalties) Act 1971, see 4 *Mallal's Digest* (4th Ed, 2003 Reissue) paras 606–612.

Cases referred to

Looi Kow Chai & Anor v PP [2003] 2 MLJ 65 (refd)
PP v Mohd Bandar Shah bin Nordin & Anor [2005] 2 MLJ 349 (folld)
R v Thorpe [1987] 1 WLR 383 (refd)
Su Ah Ping V PP [1980] 1 MLJ 75 (refd)

Legislation referred to

Criminal Procedure Code s 180
Firearms Act (Increased Penalties) 1971 ss 2(1)(c), 7(2)
Firearms Act 1968 [UK] s 57(1)

Amir Nasruddin (Deputy Public Prosecutor, Attorney General's Chambers, Kota Kinabalu) for the prosecution.
Henry Lim (Shim, Pang & Co) for the accused.

Lincoln Albert J:

[1] The accused is charged as follows:

That you, UMAR CIPTO SUMARTO, are charged at the instance of Public Prosecutor, Malaysia and the charge against you is as follows:-That you, on 28 July 2001, at about

8.15pm, on board a ship namely 'Semoga Makmur'Regisration No 1313 TR at Latitude 04 10'24'North, Logitude 117 54'06'East at sea within Tawau Port, Saima Point, in the District of Tawau, in the State of Sabah did traffic in firearms to wit:

1 5.38 Smith & Wesson Revolvers (without Serial Number);

2 1 Colt 45 pistol, Serial No SN 802517;

3 2 M -16 Magazines;

4 2 Colt 45 Magazines;

5 9 Colt 45 life ammunitions;

6 5 Colt 45 Shells;

7 60 Calibre 5.56mm life ammunitions;

8 1 Calibre 7.62mm life ammunition;

9 1 M -16 Serial No RP100124;

10 1 M-16 Serial No RP 11584.

and you have thereby committed an offence punishable under s 7(1) of Firearms (Increased Penalties) Act 1971 (Act 37).

[2] The facts established by the prosecution show that the accused, an Indonesian national, embarked on a long journey that took him from Ambon, Indonesia to Java and thence through Malaysia to the Philippines to purchase and obtain firearms and ammunition. This is to equip the muslims in Ambon to defend themselves against their enemies. The accused was accompanied by one Md Rasyid bin Ismail (PW10) a Malaysian ex-soldier dishonourably discharged from the army, upon whom the accused relied for the purchases because PW10 had the necessary contacts in the Philippines to accomplish the mission. The funds for the purchases were sourced by the accused in Java prior to the journey. The accused with the assistance of PW10 managed to purchase the firearms and ammunition set out in the charge from several people and at various places in the Philippines. Having successfully accomplished his mission in the Philippines, the accused endeavoured to return to Ambon. The return journey took the accused and PW10 to Semporna and thence to Tawau where they took refuge at the mosque there while waiting for the next stage of the long journey back to Indonesia. The firearms and ammunitions were placed in two bags for the return journey and were last seen by PW10 at the Tawau mosque with the accused before, for some mysterious reason, PW10 parted company with the accused. The two bags into which the firearms and ammunitions were placed were positively identified by PW10. The two bags were produced, tendered and marked as exhs P5 and P6.

[3] Jaafar Karamah (PW2), a fellow member of the 'Jemaah Tabligh' sect to which both the accused and PW10 belonged, testified that he saw the accused carry the two bags, P5 and P6 when they both boarded the vessel 'Semoga Makmur'for the voyage to Indonesia at about 7pm in the evening of 26 July 2001. During the voyage and while still in Malaysian territorial waters, the vessel was accosted by a Malaysian PX1

patrol boat commanded by ASP Md Yusof bin Abdul Rahman (PW1) at about 8.15pm the same night of 26 July 2001. The vessel was made to stop and subsequently PW instructed three of his men to inspect the vessel. The three men were Constable Ravikumar a/l Balakrishnan (PW5), Constable Saravanan a/l Wadarajan (PW6) and Constable Zamri Zakaria. They boarded the vessel which had 11 persons on board including the accused and PW2 and as instructed by their commander, PW1, they carried out an inspection of the vessel. The inspection led to the discovery of exhs P5 and P6 under a mattress on the port side of the vessel 'Semoga Makmur'. Exhibit P5 was the dark blue bag found and retrieved by PW5 from the vessel while exh P6 was found and retrieved by PW6. Both PW5 and PW6 testified that they each inspected exhs P5 and P6 respectively and found that the two bags contained the firearms and ammunitions. These were also produced tendered and admitted as exhibits. The two bags P5 and P6 together with their contents were taken on board the PX1 patrol boat and placed in the wheel-house in the custody of PW1.

[4] The spot where the vessel was accosted, stopped and inspection carried out by the three men from the PX1 patrol boat was plotted by Sub-Inspector Kassim Ismail Baali (PW4) and decidedly ascertained to be within Malaysian territorial waters at a latitude of 04 degrees 10' 24' N and longitude of 117 degrees 54' 06' E. All 11 persons on board the vessel were subsequently arrested and escorted together with the vessel to the Marine Police jetty. PW1 later handed over the firearms and ammunitions to ASP Abdul Halim bin Harun (PW9) who in turn handed them over to Chief Inspector Ismail bin Abdullah (PW7) an amourer at the Police Contingent Headquarters at Kota Kinabalu. PW7 conducted the requisite serviceability test. He ascertained and confirmed that each of the items was serviceable. The firearms and ammunitions were subsequently taken back to Tawau by Lance Corporal Mazlan bin Minin (PW8) and kept in the exhibit store under lock and key.

[5] These were the facts established from a maximum evaluation on the totality of the evidence adduced at the end of the case for the prosecution which formed the basis for my ruling that the prosecution had succeeded in establishing a prima facie case within the meaning of s 180 of the Criminal Procedure Code and the principles enunciated in *Looi Kow Chai & Anor v Public Prosecutor* [2003] 2 MLJ 65, per Gopal Sri Ram JCA at p 81:

> In other words, we are unable to discover anything in the language of the recently formulated s 180 that requires a judge sitting alone first to make a minimum evaluation and then when the accused elects to remain silent to make a maximum evaluation in deciding whether to convict or not at the close of the prosecution case.
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> It therefore follows that there is only one exercise that a judge sitting alone under s 180 of the code has to undertake at the close of the prosecution case. He must subject the prosecution evidence to maximum evaluation and ask himself the question: If I decide to call upon the accused to enter his defence and he elects to remain silent, am I prepared to convict him on the totality of the evidence contained in the prosecution case? If the answer is in the negative then no prima facie case has been made out and the accused would be entitled to an acquittal.

[6] I was satisfied that from the evidence adduced the prosecution had proved unlawful possession of more than two firearms by the accused and could with justification rely on the presumption under s 7(2) of the Firearms Act (Increased Penalties) 1971 ('the Act') which states:

> Any person proved to be in unlawful possession of more than two firearms shall be presumed to be trafficking in firearms.

[7] The accused was accordingly called upon to enter his defence. The defence called only one witness, the accused himself who gave evidence on oath. The accused testified that he championed the cause of defending the muslim community in Ambon and those in several other islands, against the atrocities perpetrated by their enemies. It was in Ambon that he met PW10 and there both agreed to go to the Philippines to purchase arms to better protect the muslim community against the slaughter of innocent lives and wanton destruction of places of worship by their enemies. The accused testified that after raising the funds in Java to which he contributed with the proceeds of the sale of his motorcycle, he went together with PW10 to the Philippines. In fact, the accused reiterated the material particulars of the testimony of PW10 regarding their journey to the Philippines where they purchased the firearms and ammunitions and back until they parted company just before the accused took that fateful voyage on the boat 'Semoga Makmur'where he was arrested together with all the other passengers and crew on the night of 26 July 2001. The accused confirmed that he and PW10 placed the firearms and ammunitions in two bags P5 and P6. These were with them throughout the journey from the Philippines to Sabah and placed in the Tawau mosque while waiting for the last leg of the journey back to Indonesia. They were with the accused when PW10 last saw the accused. The accused testified that he took the two bags P5 and P6 with him when he boarded the 'Semoga Makmur'corroborating PW2's evidence that he saw the accused carry the two bags which looked identical to P5 and P6 when both boarded the vessel. The accused did not admit the firearms and ammunitions found in P5 and P6 were the self-same firearms and ammunitions purchased in the Philippines nor did he admit that P5 and P6 were the very same bags in which the firearms and ammunitions were kept in when they were retrieved by PW5 and PW6 from the 'Semoga Makmur'. The accused did, however, under cross examination by the learned DPP state clearly and unreservedly that the firearms and ammunitions were similar to those he and PW10 purchased in the Philippines and took with him when he boarded the 'Semoga Makmur', in the two bags P5 and P6 which according to the accused also looked similar to the two bags he used to carry the firearms and ammunitions.

[8] The fundamental principles that constitute the cornerstone of our criminal justice system is that the burden is on the prosecution to prove its case beyond reasonable doubt; there is no requirement placed on the accused to adduce evidence to disprove any aspect of the prosecution case; all that is necessary for the accused is,

from all the evidence adduced, to cast a reasonable doubt in the prosecution's case. Corollary to that is the fundamental principle that the prosecution is not required to exclude or disprove every imaginable possibility and prove its case beyond the shadow of a doubt nor does it necessarily follow that the accused will be acquitted just because a doubt is cast on the prosecution case; in order to be sufficient it has to be a reasonable doubt.

[9] It is contended for the defence that the prosecution has failed to establish that the firearms and ammunitions tendered as exhibits including the two bags P5 and P6 in which they were placed were those that were purchased in the Philippines and found in the possession of the accused in the 'Semoga Makmur'. Central to this issue is the fact that P5 and P6 containing the firearms and ammunitions were found in the 'Semoga Makmur'but were not in the physical possession of the accused. There was this possibility that P5 and P6 which were bags similar to those that could be easily purchased anywhere could have belonged to any of the passengers and crew of the 'Semoga Makmur'. I have considered and reconsidered this aspect of the prosecution case and reminded myself of the fact that PW10 and PW2 were both in their respective roles, interested parties whose testimonies must be treated with utmost caution. I am satisfied that they were witnesses of truth. I am therefore satisfied that P5 and P6 and the firearms and ammunitions placed inside were the same bags containing the firearms and ammunitions the accused took with him when he boarded the 'Semoga Makmur'. That part of PW2's testimony to the effect that he heard the rest of the occupants on board the 'Semoga Makmur'tell PW5 and PW6 that the two bags P5 and P6 belonged to the accused constitute evidence supporting the prosecution's version of the case and was accordingly admitted on that basis and not as evidence to prove that P5 and P6 belonged to the accused. The version put forth by the prosecution was that P5 and P6 containing the firearms and ammunitions bought in the Philippines were taken on board the 'Semoga Makmur' by the accused. This was confirmed by the accused's own testimony. Hence, it cannot be said that the prosecution's case was based on strong suspicion or simply because it was likely to be true. The evidence of PW10, PW2 and that of the accused taken together establishes the prosecution case that the accused was in possession of the firearms and ammunitions placed inside P5 and P6 at the time he was arrested on the 'Semoga Makmur'. As to possession of the firearms and ammunitions, I need only reproduce passages from *Public Prosecutor v Mohd Bandar Shah bin Nordin & Anor* [2005] 2 MLJ 349 where at p 370, VT Singham J stated:

> In *Toh Ah Loh & Mak Thim v R* [1949] MLJ 54, His Lordship Gordon Smith Ag CJ said:
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> > Possession, in order to incriminate a person, must have the following characteristics. The possessor must know the nature of the thing possessed, must have in him a power of disposal over the thing, and lastly must be conscious of his possession of the thing. If these factors are absent, his possession can raise no presumption of mens rea, without which (except by statute) possession cannot be criminal. In *Chan Pean Leon v Public Prosecutor* [1956] MLJ 237 at p 239, his Lordship Thomson J (as he then was} said:
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> > > 'Possession' itself as regards criminal law is described as follows in *Stephen's Digest* (9th Ed, p 304):

> A moveable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons and when the circumstances are such that he may be presumed to intend to do so in case of need.
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> To put it otherwise, there is a physical element and a mental element which must both be present before possession is made out. The accused must not only be so situated that he can deal with the thing as if it belonged to him, for example have it in his pocket or have it lying in front of him on a table. It must also be shown that he had the intention of dealing with it as if it belonged to him should he see any occasion to do so, in other words, that he had some animus possidendi. Intention is a matter of fact which in the nature of things cannot be proved by direct evidence. It can only be proved by inference from the surrounding circumstances. Whether these surrounding circumstances make out such intention is a question of fact in each individual case.

[10] I am satisfied that from the evidence of PW5, PW6, PW10, PW2 and the accused's own testimony the prosecution has succeeded in establishing possession of the firearms and ammunitions by the accused. The accused knew that the firearms and ammunitions were in the two bags P5 and P6 and were placed by him on board the 'Semoga Makmur' and he had the power of disposal of the firearms and ammunitions to the exclusion of all the others on board at the time they were found by PW5 and PW6.

[11] It is also contended by the defence that the prosecution could not prove that the firearms and ammunitions seized in the 'Semoga Makmur' were the ones produced and tendered in court. The principles to be applied on that aspect of the defence can be found in the judgment of Suffian LP in *Su Ah Ping v Public Prosecutor* [1980] 1 MLJ 75at p 78:

> The question was whether the exhibits the Inspector produced were the guns and ammunition he found at the scene and as when he produced them as those very guns and ammunition there was no objection by the defence, it would have been a waste of judicial time to call all the intervening handlers. In our experience, much judicial time is spent unnecessarily, notably in subordinate courts, in ensuring no break in the chain of evidence. In our judgment, if the officer who picked up an object at the scene produced it and identified it as that very object, that is enough, and there is no need to call every other officer who handled it.
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> For this reason, it is desirable for a police officer who picked up an object that is easily marked such as a gun, to mark it well, in case it may be needed later on as an exhibit. There are, however, objects such as blood samples and the like that cannot be easily marked; it is only in the case of such objects that it may be necessary to call everybody who has handled it — then only if there is doubt as to identity.

[12] Here, the prosecution produced PW5 and PW6 to identify the firearms and ammunitions found in the two bags, P5 and P6 and PW1 the commander of the PX1 patrol boat who was also the commanding officer of PW5 and PW6 to whom PW5

A and PW6 handed over the firearms and ammunitions. These exhibits were handed over to PW9 who took the firearms and ammunitions to Kota Kinabalu where they were handed over to the amourer, PW7 who conducted the serviceability tests on the firearms and some of the ammunitions after which they were handed over to PW8 who took the exhibits back to Tawau and placed them in the exhibit store which was under the exclusive control of PW8 who held the key to it. The exhibits went through an elaborate process of registration and identification marking by PW8. When the exhibits were taken by PW9 for testing in Kota Kinabalu they were placed in properly marked boxes and after testing handed over to PW8 in the same boxes and taken back to Tawau where they were placed in the exhibit store by PW8. PW7, PW8 and PW9 were all called as witnesses and identified the firearms and ammunitions. I am satisfied that from the evidence adduced there was no material breach in the chain of evidence, it being unnecessary, for example, to establish how and who handled the exhibits during PW9's flight from Tawau to Kota Kinabalu nor call everyone who could possibly have held the boxes containing the firearms and ammunitions before they were handed back to PW9 when the plane landed in Kota Kinabalu. I am acutely aware of some discrepancies in the testimonies of PW1, PW5, PW6, PW7, PW8 and PW9 but I am satisfied that all of them identified the exhibits in material particulars. As to discrepancies and inconsistencies in their testimonies it is useful to reproduce a passage from the judgment of VT Singam J in *Public Prosecutor v Mohd Bandar Shah bin Nordin & Anor*at p 690:

> In *De Silva v Public Prosecutor* [1964] MLJ 81at p 83, his Lordship Gill J (as he then was) said:
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> > Discrepancies and contradictions there will always be in any case. In considering them what the court has to decide is whether they are of such a nature as to discredit the witness entirely and render the whole of his evidence worthless and untrustworthy.

[13] I do not think that the doubt which may possibly exist because of the failure of the prosecution's witnesses to identify and remember with precision the serial numbers of the firearms seized in the 'Semoga Makmur'or their inability to confirm any further than to testify that the firearms and ammunitions purchased in the Philippines and seized in the 'Semoga Makmur' were similar to those produced and tendered as exhibits constitute a reasonable doubt. I am satisfied that from the evidence of the prosecution's witnesses viewed together with the accused's testimony and making the inferences from the relevant surrounding circumstances, the prosecution has succeeded in establishing that the exhibits produced in court were the firearms and ammunitions seized from the 'Semoga Makmur'. It would be totally unjust to impose upon the prosecution the added burden of disproving or excluding every doubt that can possibly exist.

[14] The other points raised on behalf of the accused relate to the meaning of the word 'lethal' under the definition of 'firearms' and the meaning of 'traffic'. Learned

defence counsel, Mr Henry Lim argued that in the absence of evidence to show that the firearms tendered as exhibits could hit their target they were not 'lethal' although in the face of ample evidence from PW7 they were all serviceable, it was conceded that they did not suffer from malfunction. Section 2(1) of the Act defines 'firearm' as follows:

> any lethal barreled weapon of any description from which any shot, bullet or other missile can be discharged by means of an explosive charge, and includes a bomb or grenade containing an explosive charge.

[15] The word 'lethal' is not defined by the Act and it would be useful to refer to *R v Thorpe* [1987] 1 WLR 383 where the English Court of Appeal had to construe the meaning of the word 'lethal' under s 57(1) of the Firearms Act 1968 which is similar to s 2(1) of the Act. Kenneth Jones J delivering the judgment of the Court of Appeal had this to say at pp 111–112:

> The subsequent authority is *Moore v Gooderham* [1960] 3 All ER 575, [1960] 1 WLR 1308, Again this was a decision of the Divisional Court, presided over the Lord Parker CJ, and a court which included Ashworth J. The court there was dealing with the sort of air gun which is commonly found in the possession of young people. It was called a 'Diana' air gun. The justices had described it as a gun of the type which was the least powerful which could be obtained. In the course of a short judgment Lord Parker CJ said ([I960] 3 All ER 575 at pp 576–577, [1960] I WLR 1308 at pp 1310–1311):
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> > … I think that (the justices) were fully entitled to give to the word 'lethal the sense that the injury must be of a kind which may cause death. That is the ordinary meaning of the word, but it is to be observed that in this connexion one is not considering whether a firearm is designed or intended to cause injury from which death results, but rather whether it is a weapon which, however misused, may cause injury from which death may result…
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> It is quite clear from the reading of that judgment that Lord Parker CJ was laying down there the meaning to be attributed to the word lethal, or the effect of it, and was saying that a lethal weapon was one which when misused was capable of causing injury from which death might result.

[16] Bearing in mind the meaning ascribed to the word 'lethal', the prospect of requiring the prosecution to adduce evidence that the firearms were tested to show they were capable of hitting their target, as argued, would certainly make one shudder. In my view, it is sufficient in the instant case for the prosecution to adduce evidence to show that the M16s, pistols and revolvers were serviceable because it is an obvious fact that those weapons would cause injury which could lead to death if a 'shot bullet or missile' is discharged from them. The maxim *quod constat clare non debet verificari* — what is clearly apparent is not required to be proved, applies.

[17] The other point raised by the defence is that the accused did not and never had the intention to 'sell' the firearms and it was therefore argued that the accused could not be said to traffic in firearms. I find no merit in this argument.

[18] In the first place, the prosecution, having proved that the accused was in unlawful possession of more than two firearms is entitled to rely on and invoke s 7(2) of the Act.

[19] There is no doubt that the accused was in unlawful possession of the firearms because he admitted that he did not hold an arms licence or a valid permit. Section 2(1) of the Act states:

> 'unlawful possession of a firearm' means possession, custody or control of a firearm, or the carrying thereof, in contravention of theprovisions of the Arms Act 1960.

Section 3 of the Arms Act 1960 is as follows:

> Subject to this Act and any regulations made thereunder, no person shall have in his possession, custody or control any arms or ammunition unless he is the holder of an arms licence in that behalf granted to him under s 4.
>
> Notwithstanding subsection (1), a person may carry and use arms or ammunition in accordance with the terms of a valid permit granted to him under s 4:
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> Provided that there is in force an arms licence in respect of those arms and ammunition granted to some other person.

[20] In any event, s 2(1)(c) of the Act is of no assistance to the accused. It states:

> 'traffic in firearms' means —
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> (a) …;
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> (b) …;
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> (c) to transfer, sell or offer for sale a firearm to a person other than a person specified in s 11(1) of the Act; or…

[21] Clearly, the words, 'transfer, sell or offer for sale' must be read disjunctively and in the circumstances, the prosecution has clearly established that the accused intended to transfer the firearms and ammunitions to his comrades in Indonesia. Lastly, I also find no merit in the defence contention that there is a doubt as to whether the offence was committed in Malaysian waters. The testimony of PW1 and PW4 to the effect that the PX1 patrol boat was patrolling our Malaysian waters sufficiently establishes that fact.

[22] Having considered and reconsidered all the evidence adduced both by the prosecution and the defence, I am satisfied that the prosecution has succeeded in establishing its case beyond reasonable doubt and the defence has failed to cast a reasonable doubt on the prosecution's case. In the circumstances, I find the accused

guilty and accordingly convict him of the offence charged. It is apt perhaps to state that in finding the accused guilty and convicting him of the offence charged, I am in no way passing judgment on the accused's profound belief in divine sanction inspired by verses from the Holy Book in respect of which learned defence counsel has so eloquently expressed. That will be determined in the hereafter. For the moment, the accused has been found guilty and convicted of the offence charged under our criminal justice system and must accordingly face the punishment provided for. I shall now hear submissions from both learned counsel Mr Henry Chin and learned DPP Mr Amir Nasruddin before I pronounce the sentence.

Order accordingly.

Reported by I Izzuddin